

Supreme Court, U. S.
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IN THE
Supreme Court of the United States

MICHAEL RODAK, JR., CLERK

October Term, 1977

No. **77-1401**

GUY GOODWIN,

Petitioner,

—v.—

JOHN BRIGGS, et al.,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI**

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OPPOSITION TO PETITION FOR CERTIORARI
COUNTER STATEMENT OF FACTS^{*/}

Starting on Friday, July 7, 1972, 20 members of the Vietnam Veterans Against the War/Winter Soldier Organization (hereinafter VVAW/WSO) were subpoenaed to appear before a federal grand jury in Tallahassee, Florida on July 10, 1972 at 10 A.M. Among those subpoenaed were the plaintiffs-respondents, with the exception of respondent Briggs who was subpoenaed approximately one month later. Complaint ¶10. Opposition to Petition for Certiorari, Appendix A, p. 7a.^{**/} Because many of the subpoenaees did not know each other and because they were concerned about the possibil-

^{*/} Respondents will not repeat facts concerning the procedural posture of this case but will rather simply clarify the underlying facts which relate to the question of whether certiorari should be granted.

^{**/} In order to assist the Court, the complaint and amended complaint have been annexed hereto as Appendix A. Hereinafter referred to as Opp. App.

ity of infiltration by government agents or informers, plaintiffs, by their attorneys moved that the government be required to disclose whether any of the 18 named persons were agents or informers of the government.^{*/} Complaint ¶15, and complaint Exh. A. Opp. App., pp. 10a and 26-38a. On Wednesday afternoon, July 12th, 1972, petitioners Goodwin and the other government attorneys were given names of the eighteen subpoenaees. The next day, United States District Judge David L. Middlebrooks or-

^{*/} At that time the following list was read to the petitioner and the other government attorneys. "Mr. Levine: Now the names of the witnesses are as follows. Wayne Beverly, John Chambers, Timothy Jones, James Hall, John Kniffen, Arthur Franz, Nancy McCown, Jack Jennings, Bruce Horton, Richard Hudgens, Don Donner, Marty Jordan, Bruce Logston, Stanley Michelson, Donald Purdue, Pete Mahoney, Scott Camil (sic), Emerson Poe, and I believe there is -- I guess this is it." Complaint, Exh. A, Opp. App., p. 28a. The colloquy that followed which is referred to by petitioner at p. 12, fn. 6 of his Petition for Certiorari, dealt merely with which particular attorneys in the group represented which witnesses, and for what purpose.

dered petitioner Goodwin to take the witness stand and state under oath whether any of those persons were agents or informers.

After petitioner Goodwin was sworn the following colloquy occurred:

THE COURT:

Mr. Goodwin, are any of these witnesses represented by counsel agents or informants of the United States of America?

THE WITNESS:

No, your Honor.

Complaint, Exh. B, Opp. App., p. 38a. Counsel sought, but were denied, permission to cross examine petitioner Goodwin.

More than one year later, in the midst of the trial of United States v. Briggs, et al., GCR 1353 (N.D. Fla.) respondents, eight of whom were defendants in that case, learned for the first time that one of the

persons named above, Emerson L. Poe, was a paid FBI informer and had been for more than six months before petitioner made his sworn denial. Complaint ¶26, and Opp. App. p. 15a-16a.

Respondents have alleged in their complaint (at ¶31) and petitioner has virtually conceded^{*/} that petitioner falsely testified as he did in order to conceal an informer in the defense camp both at the grand jury and later in preparations for trial. Complaint ¶31, and Opp. App., p. 18a-20a. Respondents further allege, that cloaked by petitioner's false testimony, Poe maintained a position of trust with

*/ In his Petition for Certiorari, petitioner Goodwin states as follows: "The circumstances of the inquiry indicate that petitioner was faced not only with the decision of how to respond without exposing a source of information to possible targets of the grand jury proceeding...." Petition, p. 12, fn. 6.

respondents through the grand jury and the year of the pre-trial preparations and therefore was privy to defense information which he provided to the government. Complaint ¶¶29-30, Opp. App. pp. 17a-18a.

Finally, respondents have alleged that in addition to Emerson L. Poe, one or more of the 18 persons named for petitioner Goodwin to check on, and covered by the Court's question to him, were in fact agents or informers. Complaint ¶32, Opp. App. p. 20a.

Although in their complaint respondents sought both damages and the appointment of a special prosecutor, the availability of the latter remedy has not yet been ruled on by the District Court.

I. REASONS FOR DENYING THE WRIT

Petitioner has described this case as presenting "important questions concerning the scope of immunity" for federal prosecu-

tors. Petition for Certiorari, p. 8. Respondents agree with that characterization of this case but we believe that the importance of those questions requires that a factual record be developed before they are addressed by this Court and therefore the writ should be denied.

Petitioner has made basically four arguments as to why certiorari should be granted: first, that this case is controlled by Yaselli v. Goff, 12 F.2d 396 (2nd Cir., 1926) aff'd. 275 U.S. 503, which held a prosecutor immune from a damage suit for malicious prosecution; second, that the opinion of the Court of Appeals was contrary to the decision of this Court in Imbler v. Pachtman, 424 U.S. 409 holding a prosecutor immune from a suit for knowingly presenting false evidence and suppressing material evidence in a criminal trial; third, that the distinction made by

the court below of a grand jury's investigative and deliberative functions was unworkable; and, fourth, that the court below erred in its assumption that other safeguards against prosecutorial misconduct were inadequate.

Petitioner's arguments depend first on a fundamental mischaracterization of the nature of this case as a malicious prosecution action, and second on his assertion of facts, nowhere in the record. Therefore, for this Court to truly be able to assess the important question herein - the scope of prosecutorial immunity in exceptional situations such as this - a full record should be available to the Court and not merely plaintiff-respondent's complaint and petitioner's unsworn assertions of fact which are discussed more fully below.

- A. This Case Falls Within The Exception To Prosecutorial Immunity Set Forth In This Court's Ruling in Imbler v. Pachtman.

Although petitioner erroneously sought to characterize this case as a malicious prosecution case as in Yaselli v. Goff, supra, respondents' complaint belies that characterization. Rather, it is an action for violation of civil rights caused by allegedly false testimony given under oath by a federal prosecutor.

Petitioner was called upon by the court to state the answer to a very direct question, namely: "Mr. Goodwin, are any of these witnesses represented by counsel agents or informants of the United States of America?" Complaint, Exh. B, Opp. App., p. 38a.

The question related to a simple statement of fact. The answer required no discretion or analysis, it called for

a "yes" or "no"....true or false.

Nor is this case controlled by this Court's more recent ruling in Imbler v. Pachtman, supra, for despite petitioner's repeated assertions that his decision and act were comparable to a prosecutor's decision of what sort of evidence to produce before a grand or petit jury, nothing could be farther from the truth. First, his act in concealing an FBI informer, was investigatory not quasi-judicial in nature. Second, it was ministerial, not discretionary. In fact, this case is just the sort left undecided in Imbler v. Pachtman, supra, where this Court stated:

We have no occasion to consider whether like or similar reasons require immunity for those aspects of the prosecutor's responsibility that casts him in the role of an administrator or investigative officer rather than that of an advocate. We hold only that in initiating a prosecution and in presenting the state's case, the prosecutor is

immune from a civil suit for damages under §1983. Imbler v. Pachtman, supra, 424 U.S. at 430-31.

Respondents have alleged that petitioner Goodwin committed perjury in order to conceal an informer in the defense camp of the subpoenaees to the Tallahassee grand jury in July 1972. Later, the defendants were indicted by that grand jury on charges of conspiring to disrupt the August 1974 Republican National Convention. Respondents argued, and the court below held, that therefore his act was investigatory in nature. Although petitioner appears to concede that he sought to conceal the fact that Emerson Poe was an informer (Petition, p. 12, fn. 6), he still seeks to argue that his action was the type of decision normally associated with the prosecutor's role. Respondents have alleged that as a result of petitioner Goodwin's false testimony, Emerson L. Poe remained

in a position of trust among the defendants and was able to and did gather information and evidence which he regularly turned over to the FBI. Complaint, ¶¶27-29. As respondents will demonstrate at trial, some of that evidence was actually used at trial by the prosecution. Thus, petitioner's action was no different than that of the police or FBI gathering evidence for trial.

Petitioner also argued that his act was a typical discretionary decision of a prosecutor by suggesting first that he had a reason to cover-up Emerson Poe's identity and second because he might have been somewhat confused as to whether Poe's name was truly included in the list of names covered by his testimony. Surely petitioner does not mean to argue that federal prosecutors have the power and right to exercise their discretion as to when

and whether they will lie under oath in response to questions of the court depending on whether they wish or even think it wise to hide the truth from the defendant and the Court. The contrast between the decisions made by the prosecutors in Imbler and Yaselli and that made here, merely underscores that petitioner's act was not a typical discretionary prosecutorial act. In those cases, the prosecutors were deciding whether to prosecute and what evidence to use at trial and turn over to the defendant. Those decisions did require the use of judgment and discretion on the part of the prosecutor and were normally and regularly associated with the advocate's role. Here, in contrast, as the majority opinion clearly states:

. . . Appellant's alleged perjury bears no relation whatever to the advocate's role as conceived by the Supreme Court in Imbler. The obligation to disclose, pursuant

to judicial direction, the presence of Government informants among those subpoenaed to testify before the grand jury is entirely foreign to advocacy issues such as whether to initiate a prosecution or how to conduct a prosecution once begun. Such disclosure was, rather, an action required of appellant by the court in order to enable the court to deal with a possible defect in the conditions under which subpoena compulsions had been brought to bear in the grand jury investigation. Petition for Certiorari, App. A, p. 22a (emphasis added).

As to petitioner's alleged confusion concerning Emerson Poe's inclusion on the list, as petitioner himself pointed out, he can claim a defense of confusion at trial, but that does not alter the questions of law herein. What is more, respondents have alleged in their complaint that one or more other persons included on the list of 18 were also agents or informants and if they are correct, petitioner would have no defense of confusion with respect to those persons. These and

other allegations made by respondents which bear on the nature of the act at issue will be developed in a trial. Certainly this Court would be in a far better position to determine the true nature of petitioner Goodwin's act if it had a full record before it.

B. The Question Of Whether There Are Meaningful Methods To Deter The Sort of Prosecutorial Misconduct Alleged Herein Is An Issue Of Fact Which Requires A Trial.

Petitioner has argued that the ruling of the Court of Appeals was erroneous in part because that court concluded that neither criminal sanctions nor disciplinary procedures constitute a meaningful safeguard against prosecutorial misconduct in a case such as this. Petition, pp. 17-18. Petitioner then asserts that unbeknownst to the Court of Appeals at the time it ruled, both the trial judge in

Florida and the Department of Justice inquired into petitioner's actions and concluded that he had done nothing improper. Petition, p. 18, fn. 13.

Those assertions, however, were unsworn, and neither respondents nor this Court are in a position to evaluate whether the inquiries were meaningful, if they did occur.

One of the considerations mentioned by this Court in dismissing the civil action in Imbler v. Pachtman was the availability of alternative safeguards. This Court, however, must have more than the unsworn statements of Justice Department attorneys to determine whether a Justice Department investigation of the misconduct of one of their own members or ex parte considerations by the Florida trial judge were in fact meaningful investigations, or, whether, as concluded by

the court below, the potential checks on prosecutorial misconduct were absent here. Pet. App. p. 29a. Particularly in light of respondents unsworn and belated assertions of fact, in order to aid this Court in the application of immunity principles to the facts herein, respondents should be permitted to proceed with discovery and trial.

II. SHOULD THIS COURT GRANT CERTIORARI HEREIN IT SHOULD REFORMULATE THE QUESTION PRESENTED FOR REVIEW.

Respondent has formulated the major question presented for review as follows:

Whether the absolute immunity from civil damage suits covers actions taken in the conduct of grand jury proceedings. Petition, p. 2.

Not only is that question too broad to assist this Court in considering the issues presented herein; more important, it is misleading about the nature of this case and will therefore hamper this Court in

its consideration of whether and how principles of prosecutorial immunity apply to the facts herein. For it is clear that not all possible actions taken by a prosecutor "taken in the conduct of" grand jury proceedings would be considered quasi-judicial conduct and therefore immune from suit. If, for example, in their efforts to get a witness to testify before the grand jury, police agents beat up a potential witness and the prosecutor was present and participated in the events, it is unlikely that activity would be cloaked with immunity. Therefore, in order to consider the import of the facts in this case, one must go beyond their timing and reach to their character and purpose. Respondents therefore suggest that if the Court decides to grant certiorari it consider the following question:

Whether a prosecutor who, it is alleged, lied under oath to conceal the presence of an informer in the defense camp, has absolute immunity from damage actions based on that conduct.

III. THE QUESTION OF WHETHER WITNESS IMMUNITY IS APPLICABLE HEREIN SHOULD NOT BE CONSIDERED BY THIS COURT.

This Court need not reach the question of whether the issue of witness immunity falls within the collateral order doctrine as set forth in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 and Abney v. United States, 431 U.S. 651. For it is very clear from the opinion of the majority below that they only reached the question because it was raised by the dissenting judge. Pet. App., p. 30a. More important, however, as the majority stated, "...this record in truth raised

no issue of witness immunity..." Pet. App. p. 35a, since that question was never certified by the Court as an issue for appeal. For as the Court stated, "...we doubt that [petitioner] would seriously undertake to maintain that he was an ordinary witness." Pet. App. p. 33a. As the majority pointed out further, when counsel for respondents sought to cross-examine petitioner Goodwin as they would have been permitted to do with an ordinary witness, that permission was denied.

Thus the majority concluded:

...The policies underlying the common law doctrine of witness immunity are tangential, and essentially irrelevant, to the question of whether appellant -- a prosecutor functioning in an investigative context -- should be accorded complete invulnerability to suit for the consequences of an act performed in that capacity. Pet. App. p. 34a.

CONCLUSION

For the foregoing reasons, certiorari

should be denied. Should certiorari be granted however, respondents urge that the question considered should be reformulated as set forth herein and should be limited to that of the applicability of prosecutorial immunity to the facts herein.

Respectfully submitted,

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Dated: New York, N.Y.
May 26, 1978

APPENDIX

1a

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----x
JOHN BRIGGS, et al., :

Plaintiffs, :

- against - :

GUY GOODWIN, et al., :

Defendants. :

-----x

Civil Action No. 74-803
JURY TRIAL REQUESTED

COMPLAINT

JURISDICTION

1. The jurisdiction of this Court arises under 28 U.S.C. §1331, 1332, 1343, 1651, 2201 and 2202.

2. The amount in controversy exceeds \$10,000 exclusive of interest and costs, in that the value of each of the rights of which plaintiffs have been deprived is in excess of \$10,000.

3. Plaintiffs' causes of action arise

under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments to the Constitution of the United States; 18 U.S.C. §§371, 401, 402, 1621 and 1622; 28 U.S.C. §§2201-02; 42 U.S.C. §§1983, 1985, 1986 and 1988.

4. Plaintiff JOHN BRIGGS is a resident of the State of Florida and is a member of the Vietnam Veterans Against the War/Winter Soldier Organization (hereinafter VVAW/WSO). Plaintiff BRIGGS was subpoenaed before the Federal grand jury in Tallahassee, Florida to appear on August 8, 1972 and was incarcerated for contempt of court for eight days for refusing to answer questions before the grand jury. Plaintiff BRIGGS was subsequently indicted as a co-conspirator in the superceding indictment captioned United States v. John K. Briggs, et al., GCR 1353, and was acquitted of the

charges therein on August 31, 1973.

5. Plaintiffs SCOTT CAMIL, STANLEY K. MICHELSON, DONALD PERDUE and ALTON FOSS are residents of the State of Florida. Plaintiff JOHN KNIFFIN is a resident of the State of Texas. Plaintiff WILLIAM PATTERSON is a resident of the State of Texas. Plaintiff PETER P. MAHONEY is a resident of the State of New York. All of the foregoing plaintiffs are members of VVAW/WSO and were subpoenaed to appear before the Federal Grand Jury in Tallahassee, Florida in July, 1972, and with the exception of Plaintiff MICHELSON, were indicted by that Grand Jury in an indictment captioned United States v. Camil, et al., GCR 1344. Plaintiffs were subsequently re-indicted in the superceding indictment (including Plaintiff Michelson) captioned United States v. Briggs, et al., GCR 1353 (known as the

Gainesville 8 case) which totally incorporated the charges in the preceding indictment. All were acquitted of the charges against them on August 31, 1973.

6. Plaintiff JACK JENNINGS is a resident of the State of Florida. Plaintiff ROBERT WAYNE BEVERLY is a resident of the State of Texas. Both are members of VVAW/WSO and were subpoenaed before the Federal Grand Jury in Tallahassee, Florida in July, 1972. They were incarcerated for thirty-eight days for refusing to answer questions before that grand jury, and were released on September 8, 1972 on bail pending appeal pursuant to the order of Justice William O. Douglas issued on August 31, 1972. Their convictions for contempt were reversed by the United States Court of Appeals for the Fifth Circuit on September 25, 1972.

Defendants

7. Defendant GUY GOODWIN is Attorney for the Internal Security Division of the United States Department of Justice; defendant WILLIAM H. STAFFORD, JR., is United States Attorney for the Northern District of Florida; defendant STUART J. CARROUTH is Assistant United States Attorney for the Northern District of Florida; defendant CLAUDE MEADOW is a special agent of the Federal Bureau of Investigation in Gainesville, Florida and was the agent in charge of the investigation of the Gainesville 8 Case. Defendants were responsible for conducting the investigation and grand jury which resulted in the indictments of plaintiffs BRIGGS, et al., and the incarceration of plaintiffs BEVERLY, et al., and were responsible for the prosecution of the

indictment in United States v. Briggs,
et al.

All defendants are sued both individually and in their official capacities.

STATEMENT OF FACTS

8. This is an action for declaratory relief and for damages for violations of plaintiffs' rights under the First, Fourth, Fifth, Sixth, Eighth and Ninth amendments and for injunctive relief in the form of the appointment of a special prosecutor to prosecute the defendants for violations of law including 18 U.S.C. §§241, 242, 371, 401, 402, 1621 and 1622.

9. Plaintiffs CAMIL, PATTERSON, MICHELSON, KNIFFIN, FOSS, PERDUE, BEVERLY, JENNINGS and MAHONEY are veterans of this nation's Armed Forces and have served in the war in Vietnam. They are also members of the VVAW/WSO. Plaintiff BRIGGS has never served in the Armed Forces, but

has been and is a member of VVAW/WSO.

10. Starting on Friday, July 7 at or about 12:00 noon, in excess of twenty (20) grand jury subpoenas, most of which bore dates of issuance four days earlier, were served in a coordinated sweep upon the named plaintiffs and other members of VVAW/WSO, with the exception of plaintiff BRIGGS, who was subpoenaed a month later. The subpoenas were returnable sixty-nine (69) or less hours later, July 10, 1972 at 10:00 a.m., in Tallahassee, Florida (with a weekend intervening). They were served not only on those plaintiffs who live or had arrived in Florida, but also on VVAW/WSO members in the State of Arkansas, Texas,

Louisiana, Washington, D.C., and others. All the subpoenas were returnable at the same time, notwithstanding the obvious impossibility of the grand jury hearing this testimony all at once. In addition, the subpoenas coincided with a VVAW/WSO anti-war march at the Democratic National Convention in Miami, for which the organization had a permit.

11. Twenty-one (21) of the persons subpoenaed to appear before the grand jury including the plaintiffs, many of whom did not previously know each other, were represented by nine lawyers who were present at various times over the four days the grand jury was in session. Nearly all of the lawyers met their clients for the first time on or after the afternoon of July 7th. Thus, when they appeared in Tallahassee on July 10, 1972, witnesses and attorneys had known

each other for less than two days and some had met the night before or morning of the grand jury. Some did not meet until the grand jury had begun.

12. During the grand jury itself, the procedures used by defendants in calling witnesses heightened the confusion, for defendants' "piggy-backed" witnesses, calling a new witness into the grand jury room to be questioned while the prior witness was out of the room consulting with his attorney for legal advice respecting his answer to the prior question.

13. On information and belief, these procedures were used by defendants to enable them to plant informants in the defense camp and to make information from the defense camp more readily available to their planted informants.

14. Because of the large number of subpoenaed witnesses, the small number

of lawyers, the inadequacy of physical facilities and the procedure used by the government for calling witnesses, it was necessary during the one and a half days of preparation for the grand jury and the four days of grand jury proceedings, to have many discussions of legal matters in groups of witnesses and attorneys.

15. As a result of the aforementioned conditions, and of the fact that VVAW/WSO was known to be heavily infiltrated by paid informers and agents of state and local police and by the Federal Bureau of Investigation, plaintiffs and the other subpoenaed witnesses made a motion before United States District Judge David L. Middlebrooks requiring defendants to disclose the identity of any agents or informers represented by enumerated counsel in order to protect the constitutional rights of plaintiffs and other witnesses

represented by those counsel.

16. On the afternoon of July 12, 1972, Judge Middlebrooks requested that counsel for movants submit a list setting forth which witnesses were represented by counsel. That list, which included the names of all the plaintiffs then subpoenaed, including Emerson L. Poe, was read to the court in the presence of defendants GOODWIN, STAFFORD and CARROUTH. See Exhibit A annexed hereto and made part hereof.

17. On July 13, 1972, in response to an order of the court, defendant GOODWIN, on behalf of all defendants and with their full knowledge, falsely represented to the court under oath that none of the persons listed were agents or informers, when, on information and belief, he and the other defendants herein knew that at least one subpoenaed witness/client was

a paid FBI informer and failed to disclose this fact to plaintiffs and their attorneys up until the day that informer took the witness stand in United States v. Briggs, et al., (see Exhibit B annexed hereto and made a part hereof).

18. On information and belief, defendant GOODWIN'S testimony was deliberately calculated to mislead plaintiffs and to both conceal the unconstitutional invasion of the defense camp before and during the grand jury and to ensure the continuance of that unconstitutional invasion.

19. On information and belief, had the grand jury known of the aforesaid perjury, they would have refused to issue the indictment requested by defendants.

20. Defendant GOODWIN's false testimony was wholly beyond the scope of his prosecutorial function.

21. On July 13, 1972, plaintiffs BEVERLY and JENNINGS were held in civil contempt for failing to answer questions before the grand jury and were incarcerated for a total of 38 days.^{*/}

22. On that same evening plaintiffs CAMIL, MAHONEY, KNIFFIN, PATTERSON, FOSS and PERDUE were indicted for conspiracy to cross state lines and riot at the Republican National Convention. United States v. Camil, et al., GCR 1344. Plaintiffs, with the exception of PATTERSON, were incarcerated pending their release on bail.

*/Beverly and Jennings were originally incarcerated for civil contempt without bail on July 13, 1972. On July 18, 1972, in an emergency appeal on denial of bail, the Fifth Circuit summarily remanded the matter to District Court, directed the Court to hold a full hearing and enlarged plaintiffs pending the hearing.

On August 9, 1972, after a brief hearing, they were once again remanded to custody without bail and remained incarcerated until September 8, 1972, eight days after Associate Justice William O. Douglas granted their application for bail pending appeal and ordered their release.

23. On August 7, 1972, plaintiff BRIGGS was subpoenaed to appear before the Federal Grand Jury in Tallahassee which had, less than one month before, issued the indictment in United States v. Camil, et al. On information and belief, that subpoena was issued in part as a result of information obtained by defendants from EMERSON L. POE during and after the grand jury proceedings in July. Such information was obtained as a result of the aforementioned perjury.

24. On August 8, 1972, plaintiff BRIGGS' subpoena was adjourned and he was ordered to reappear on September 7, 1972. On September 8, 1972 plaintiff BRIGGS was held in civil contempt for refusing to answer questions before the grand jury and was incarcerated and held without bail until September 15, 1972 when he was released by the Fifth Circuit in response

to an ex parte motion by the defendants to dismiss the appeal since they intended to withdraw the contempt.

25. On October 18, 1972, the grand jury issued a superceding indictment incorporating all of the charges against plaintiffs CAMIL, MAHONEY, KNIFFIN, PATTERSON, FOSS and PERDUE in the prior indictment and indicting plaintiff BRIGGS as a co-conspirator and plaintiff MICHELSON for aiding and abetting the conspiracy and for misprison of a felony. On information and belief the new information and the re-indictment were obtained by defendants as a result of the invasion of the defense camp by defendants' agent, EMERSON L. POE. The trial of those charges began on July 31, 1973.

26. On August 17, 1973, in mid-trial, plaintiffs learned for the first time that EMERSON L. POE, one of the persons

named on the aforementioned list of witness-clients, was at the time of defendant GOODWIN'S testimony a paid Federal Bureau of Investigation informant and had been such for more than six months prior to that time, reporting directly to defendant MEADOW each and every time he spoke with or saw plaintiff CAMIL and, on information and belief, the other plaintiffs, during and after the grand jury.

27. POE continued to be a paid informer after plaintiffs were released from the grand jury up to and during their criminal trial. He continued to maintain close personal and organizational contact with plaintiff CAMIL and other plaintiffs, solicited and passively received information concerning the defense, and continued to report to defendant MEADOW concerning each contact he had with plaintiff CAMIL.

28. On information and belief, these contacts between informer POE and the plaintiffs were maintained with the knowledge and direction of the defendants.

29. As a direct result of defendant GOODWIN'S false testimony, EMERSON L. POE remained in a position of trust amongst the plaintiffs and remained privy to information concerning plaintiffs' defense in United States v. Briggs, et al. up to August 17, 1973, when he appeared on the witness stand as a government witness.

30. During that time, and as a direct result of defendant GOODWIN'S false testimony, POE was consulted by plaintiff CAMIL concerning matters directly relating to plaintiffs' defense in United States v. Briggs, et al., including matters pertinent to the selection of the jury in that case, had access to defendants' (plaintiffs herein) mailbox which received legal

mail concerning the case throughout pre-trial preparations and was permitted to attend at least one strategy meeting of the defendants.

31. On information and belief, defendant GOODWIN'S false testimony was designed to and did result in invading the defense camp of plaintiffs and their attorneys in such a fashion as to:

a) deprive plaintiffs of their right to counsel before the grand jury and through the trial of United States v. Briggs, et al.;

b) incarcerate plaintiffs in violation of their rights to be free of cruel and unusual punishment as guaranteed by the Eighth Amendment;

c) force plaintiffs CAMIL, MICHELSON, FOSS, PERDUE, KNIFFIN, MAHONEY, PATTERSON and BRIGGS to defend themselves in a five-week trial under an indictment

that was so totally tainted as to violate their rights to due process under the Fifth Amendment and their right to counsel under the Sixth Amendment;

d) totally disrupt the lives of plaintiffs and deprived them of liberty and property by causing them to lose their jobs and/or forcing them to give up their schooling and jobs for varying periods of time up to and including 1-1/2 years in order to prepare for and finance their defense and caused them the intense pain and suffering of having their lives so totally disrupted;

e) violate the Fifth and Sixth Amendment rights of plaintiffs CAMIL, MICHELSON, FOSS, PERDUE, KNIFFIN, MAHONEY and BRIGGS by placing in their confidence during the entire period of the grand jury and trial preparations up to and including the first weeks of trial, a

paid FBI informer who was privy to the closest confidence of the plaintiffs concerning trial preparations and strategy as a result of defendant GOODWIN's sworn assurance that none of the enumerated persons were informers;

f) violate plaintiff CAMIL'S rights guaranteed by the First and Ninth Amendments to privately associate with other persons free of the eyes, ears, and influence of the state functioning under the cloak of sworn governmental assurances that his associates are not government informers;

g) violate plaintiffs' rights to substantive due process guaranteed by the Fifth Amendment.

32. On information and belief, at least one or more other persons included in the list presented to the Court and to defendants were also government informants.

33. On information and belief, defendants were aware of and deliberately concealed the fact that POE and other witnesses represented by enumerated counsel were government informants at the time of defendant GOODWIN'S testimony and continued to conceal such throughout and until the day that informer POE took the witness stand in the trial of United States v. Briggs, et al.

34. On information and belief, defendants conspired together and with EMERSON L. POE and others unknown to plaintiffs and determined to deprive plaintiffs of their constitutional rights under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments by deliberately concealing information concerning invasion of the defense camp, falsely stating under oath that none of the persons represented by plaintiffs' counsel were government

informers, and directing POE to remain in the confidence of plaintiffs and continue violating plaintiffs' rights under the Constitution.

35. On information and belief, other agents and informants of defendants in addition to Mr. POE invaded the defense camp between July 7, 1972 through and until the acquittal in the trial of United States v. Briggs, et al., on August 31, 1973, in violation of plaintiffs' aforesaid constitutional rights.

36. On information and belief, the violation of the aforementioned statutes by defendants GOODWIN, STAFFORD, CARROUTH and MEADOW are known to persons in the Department of Justice but no prosecutions have begun.

37. As defendants STAFFORD and CARROUTH are in control of recommending and securing indictments in the Northern

District of Florida, the appointment of a special prosecutor is required.

WHEREFORE, plaintiffs respectfully request that the following relief be granted:

1) That this Court issue a declaratory judgment that as a result of the actions of defendants knowingly planting or keeping one or more informations in the defense camp,

a) plaintiffs' rights under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments were violated;

b) plaintiffs were incarcerated in violation of their rights under the Fifth, Sixth and Eighth Amendments;

c) plaintiffs CAMIL, MICHELSON, PERDUE, FOSS, MAHONEY, KNIFFIN, PATTERSON and BRIGGS were unnecessarily and wrongfully required to defend themselves against criminal charges in violation of

their constitutional rights and denied the right to counsel under the Sixth Amendment.

d) plaintiffs, and particularly plaintiff CAMIL, were deprived of their rights under the First and Ninth Amendments to associate with persons of their choosing free of false statements that those persons are not government agents or informers.

2) Order that defendants pay to plaintiffs and each of them \$100,000 in punitive damages and \$50,000 in compensatory damages;

3) Order that defendants reimburse plaintiffs CAMIL, MICHELSON, FOSS, PERDUE, KNIFFIN, MAHONEY, PATTERSON and BRIGGS for the cost of their legal defense in the case of United States v. Briggs, et al.;

4) That a special prosecutor be appointed to secure indictments against

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and prosecute defendants GOODWIN, STAFFORD, CARROUTH and MEADOW for any and all violations of the law they have committed in connection with the subpoenaing and incarceration and prosecution of plaintiffs herein.

Respectfully submitted,
Attorneys for Plaintiffs

Dated: New York, N.Y.
May , 1974

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

In Re:)
Grand Jury Witnesses.) T-Misc-No. 1/122

C A P T I O N

The above-entitled matter came on to be heard before the Honorable DAVID L. MIDDLEBROOKS, United States District Judge, at the U.S. Post Office Building, Tallahassee, Florida, on the 12th day of July, 1972, commencing at 3:50 o'clock p.m.

A P P E A R A N C E S

STEWART J. CARROUTH, Assistant United States Attorney, and STARK KING, Assistant United States Attorney, U.S. Post Office Building, Tallahassee, Florida, and GUY GOODWIN, Assistant United States Attorney, U.S. Post Office Building, Tallahassee, Florida, and WILLIAM STAFFORD, United

Exhibit A

States Attorney, U.S. Post Office Building,
Pensacola, Florida, appearing on behalf of
the Government.

CAMERON CUNNINGHAM, 502 West 15th
Street, Austin, Texas, 78701, appearing
on behalf of the Grand Jury Witnesses.

DORIS PETERSON, 588 9th Avenue, New
York, New York 10036, appearing on behalf
of the Grand Jury Witnesses.

NANCY STEARNS, 588 9th Avenue, New
York, New York, 10036, appearing on behalf
of the Grand Jury Witnesses.

JAMES REIF, 588 9th Avenue, New York,
New York, 10036, appearing on behalf of
the Grand Jury Witnesses.

JUDITH PETERSEN, 115 South Main
Street, Gainesville, Florida, 32601,
appearing on behalf of Grand Jury wit-
nesses.

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EDWARD C. BROEGE, 108 Washington Street, Newark, New Jersey, 07102, appearing on behalf of Grand Jury Witnesses.

MR. LEVINE:

Now, the names of the witnesses are as follows:

Wayne Beverly, John Chambers, Timothy Jones, James Hall, John Kniffen, Arthur Franz, Nancy McCown, Jack Jennings, Bruce Horton, Richard Hudgens, Don Donner, Marty Jordan, Bruce Logston, Stanley Michelsen, Donald Perdue, Pete Mahoney, Scott Camile, Emerson Poe, and I believe there is -- I guess that is it. Some of the -- Miss Peterson asked me to make one correction. We have talked on a one-to-one basis or two-to-one basis with some of those who have not literally yet been called, and I hope Your Honor will bear in mind that we never saw

these people before. They never saw us. They arrived here with no lawyers.

Now, myself -- well, Mr. Beverly was represented in Texas by Mr. Cunningham and Mr. Cunningham is representing him in these proceedings with my assistance.

Mr. Chambers is represented by Miss Judy Petersen.

Mr. Jones was counseled by myself and Miss Petersen.

Mr. Hall was counseled -- I would like the Court to bear in mind that we were originally asked to represent these people as best we could and there has been some inner consultation between lawyers, but for the purpose of trying to make sure that they knew who had primary responsibility, this is how it has worked.

James Hall, Miss Stearns.

John Kniffen, Mr. Cunningham and myself.

Mr. Arthur Franz was here at one point and he came -- and he asked for my counsel and I remember having some conversation with him about the nature of the proceedings.

Nancy McCown, Judy Petersen.

Jack Jennings, Doris Peterson and Miss Stearns.

Mr. Hall is, Miss Stearns informs me, is both herself and Doris Peterson.

Bruce Horton, Mr. Reif.

Richard Hudgens, Mr. Cunningham and myself.

Mr. Jordan, Mr. Cunningham and myself.

Bruce Logston, Mr. Broege, although he has been consulting, Mr. Broege just arrived and he has been -- many of these witnesses, let me explain, have been coming up to many of us and asking questions and that was the nature of the original understanding between the lawyers and the witnesses, so when I mentioned these specific names, it is not to indicate that they are the only lawyers who have counseled with them, but this has

been when the people have actually been called into the Grand Jury Room, we have tried as best as possible, given the fact that everybody was out in the hallway until we were able to move into the Courtroom, and people were wondering all around, to get together with these people on an individual basis, much like a -- well, I will not go on.

Mr. Michelsen, Mr. Broege.

Mr. Perdue, Mr. Broege.

MR. GOODWIN:

Just a second. All right.

MR. LEVINE:

Mr. Mahoney, Mr. Broege.

Mr. Camile, Miss Judy Petersen, and I have just been informed that Mr. Poe, who I believe originally was not represented by counsel --

MISS DORIS PETERSON:

Just for the Sixth Amendment motion

that Your Honor ruled on the other day.

MR. LEVINE:

Now, many of these witnesses -- I am sorry. Mr. Reif and Doris Peterson.

MR. STAFFORD:

Was this Poe?

MR. LEVINE:

I would ask other counsel if they have corrections.

MR. CUNNINGHAM:

Mr. Patterson was inadvertently excluded from the list of witnesses.

MR. LEVINE:

I am sorry. Mr. Cunningham.

THE COURT:

That was Mr. Patterson?

MR. CUNNINGHAM:

Yes.

MR. LEVINE:

Yes, William Patterson.

MISS JUDY PETERSEN:

Also, Your Honor, this morning Mr. Allen was here and so I believe Mr. Philip Parsons from here in Tallahassee said that Mr. Allen had talked to him. I am not certain of his situation, but I would not represent to this Court that he does not have counsel. I believe he is talking to local counsel.

MR. LEVINE:

Now, I would ask if there are any of the other attorneys that have anything to add to that, that they do so. Mr. Novey represents Alton Foss.

MR. GOODWIN:

Who?

MR. LEVINE:

Mr. Jerome Novey. He is a local attorney from Tallahassee.

MISS JUDY PETERSEN:

Your Honor, Mr. Scott Camile, he has

counsel in Gainesville, Larry Turner that I have been working with trying to work closely with on the phone. He has been unable to get up here at this time.

THE COURT:

Well, he is represented by counsel here, though?

MISS JUDY PETERSEN:

Yes, sir.

MR. LEVINE:

Now, these -- let me say one further word. As we explained to the Court originally, all of these people were informed of the possibility of conflicts in representation developing and --

THE COURT:

Now, let me ask you something here. This bothers me, and I wish you would explain it to me.

As I understand it, essentially, the representation by counsel of witnesses

before a Grand Jury is for the purpose of advising that witness whether any information that he may give to the Grand Jury might tend to incriminate him, is that correct?

MR. LEVINE:

That is certainly one aspect of it.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE: GRAND JURY WITNESSES)
CASE NO. T MISC. 1/122)

C A P T I O N

The above-entitled matter came on to be heard before the Honorable David L. Middlebrooks, United States District Judge, at the U.S. Post Office Building, Tallahassee, Florida, on the 13th day of July, 1972, commencing at 10:37 a.m.

A P P E A R A N C E S

JAMES REIF, NANCY STEARNS, DORIS PETERSON and JACK LEVINE, 588 Ninth Avenue, New York, New York 10036, appearing on behalf of the Grand Jury witnesses.
CAMERON CUNNINGHAM, 502 West Fifteenth Street, Austin, Texas 78701, appearing on behalf of the Grand Jury witnesses.

Exhibit B

JUDY PETERSEN, 115 South Main Street, Gainesville, Florida 32601, appearing on behalf of the Grand Jury witnesses.

STEWART J. CARROUTH, Assistant United States Attorney, WILLIAM STAFFORD, United States Attorney, GUY GOODWIN, Assistant States Attorney, and STARK KING, Assistant United States Attorney, U.S. Post Office Building, Tallahassee, Florida, appearing on behalf of the Government.

* * * * *

that under these circumstances Mr. Goodwin ought to submit an affidavit under oath explaining stating there are no informants and explaining the basis on which he --

THE COURT:

Mr. Goodwin, take the witness stand.
Swear the witness, Mr. Clerk.
Whereupon,

GUY GOODWIN was called as a witness, having been first duly sworn to speak the

truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE COURT:

Mr. Goodwin, are any of these witnesses represented by counsel agents or informants of the United States of America?

THE WITNESS:

No, Your Honor.

THE COURT:

You can step down.

(Witness excused.)

MR. LEVINE:

Your Honor, may we be permitted to question Mr. Goodwin on this?

THE COURT:

No, unless you have some information that is

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----x
JOHN BRIGGS, et al., :

Plaintiffs, :

- against - :

GUY GOODWIN, individually and as :
Attorney for the Department of :
Justice, Division of Internal :
Security, et al., :

Defendants. :

-----x

Civil Action No. 74-803

AMENDMENT TO COMPLAINT

The plaintiffs hereby amend their complaint. The request for relief beginning on page 11 is amended to read as follows:

WHEREFORE, plaintiffs respectfully request that the following relief be granted:

1. That this Court issue a declaratory judgment that

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a) as a result of the actions of defendants knowingly planting or keeping one or more informants in the defense camp,

1) plaintiffs' rights under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments were violated;

2) plaintiffs were incarcerated in violation of their rights under the Fifth, Sixth and Eighth Amendments;

3) plaintiffs CAMIL, MICHELSON, PERDUE, FOSS, MAHONEY, KNIFFIN, PATTERSON, and BRIGGS were unnecessarily and wrongfully required to defend themselves against criminal charges in violation of their constitutional rights and denied the right to counsel under the Sixth Amendment.

4) plaintiffs, and particularly plaintiff CAMIL,, were deprived of their rights under the First and Ninth Amend-

ments to associate with persons of their choosing free of false statements that those persons are not government agents or informers.

b) the false testimony given by the defendant GOODWIN was beyond the scope of his prosecutorial function, and violated plaintiffs' rights under the Fifth Amendment.

2. Order that defendants pay to plaintiffs and each of them \$100,000 in punitive damages and \$50,000 in compensatory damages;

3. Order that defendants reimburse plaintiffs CAMIL, MICHELSON, FOSS, PERDUE, KNIFFIN, MAHONEY, PATTERSON and BRIGGS for the cost of their legal defense in the case of United States v. Briggs, et al.;

4. That a special prosecutor be appointed to secure indictments against

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and prosecute defendants GOODWIN, STAFFORD, CARROUTH and MEADOW for any and all violations of the law they have committed in connection with the subpoenaing and incarceration and prosecution of plaintiffs herein.

Respectfully submitted,
Attorneys for Plaintiffs

Dated: New York, N.Y.
June 18, 1974